



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 16, 2004

Mr. Jim B. Simpson  
Assistant County Attorney  
Johnson County  
2 North Main Street  
Cleburne, Texas 76031

OR2004-4897

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202654.

The Johnson County Attorney's Office (the "county attorney") received a request for information relating to Cause No. M200302614. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of records.<sup>1</sup>

Initially, we note that the records contain an arrest warrant and supporting affidavit which are subject to Article 15.26 of the Code of Criminal Procedure. Article 15.26 states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." You claim that the county attorney is prohibited by a court order from releasing the arrest warrant and basic information about the crime pursuant to section 552.107(2) of the Government Code. Section 552.107(2) excepts information from public disclosure if "a court by order has prohibited disclosure of the information." As a general rule, the exceptions found in chapter 552 of the Government Code do not apply to

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989); *see also* Gov't Code § 311.026 (where general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision); *Cuellar v. State* (521 S.W.2d 277 (Tex.Crim.App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Furthermore, this office has reviewed the two restraining orders. In the February 5<sup>th</sup> restraining order, the court prohibited several entities and individuals, including the county attorney, from discussing or making any statements to the media concerning the events at issue in Cause No. M200302614. Specifically, this order prohibits any communication concerning the investigation or prosecution of the case with the exception of the fact that the defendant was arrested and charged. The February 12<sup>th</sup> restraining order prohibits the same entities and individuals from disseminating, discussing, or releasing a particular videotape. It is clear from our review that the February 5<sup>th</sup> order does not prohibit the release of information in response to an open records request. It is our position that if the court had intended to prohibit the release of records, the court would have explicitly stated this prohibition as it did when it prohibited the release of the videotape. Since the restraining orders do not prohibit the release of any information other than the videotape, we conclude that you must release the arrest warrant and supporting affidavit we have marked in accordance with article 15.26 of the Code of Criminal Procedure.

We also note that the submitted information includes documents that have been filed with a court, namely the above-mentioned restraining orders, a motion for a restraining order, and a petition. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. Gov't Code § 552.022(a)(17); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (stating that if documents are part of public record they cannot be withheld under Gov't Code § 552.108). You claim that these records are excepted from disclosure under section 552.108. Since section 552.108 does not make information confidential, we conclude that the county attorney must release the court-filed documents in accordance with section 552.022(a)(17) of the Government Code. We will now address your section 552.108 claim for the remaining submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a criminal case that is currently pending in County Court at Law No. 1 of Johnson County, Texas. You also state that release of the information would interfere with the criminal prosecution. Based upon these representations and our review of the records, we conclude that release of the remaining information would interfere with the detection, investigation,

or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we find that section 552.108(a)(1) of the Government Code is applicable to the remaining information.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. You claim that basic information about this crime is excepted under section 552.107(2). As we have previously noted, the basic information is not subject to the above-mentioned restraining orders. Accordingly, the county attorney must release the basic information, the search warrant and supporting affidavit, and the court-filed documents. The remaining information may be withheld under section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007. As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

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<sup>2</sup>We note that basic information held to be public in *Houston Chronicle* is not excepted from disclosure under section 552.103. Open Records Decision No. 597 (1991).

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Melissa Vela-Martinez  
Assistant Attorney General  
Open Records Division

MVM/sdk

Réf: ID# 202654

Enc. Submitted documents and videotape

c: Mr. Lowell Brown  
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(w/o enclosures)